

Special Civil Application No 2178 of 1988

Date of decision: 16th February 1996

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes
2. To be referred to the Reporter or not? No
3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

HARKORBEN TRIBHOVANDAS

vs

STATE OF GUJARAT

Appearance:

Shri S.H.Sanjanwala, Advocate, for the Petitioners.

Shri D.N.Patel, Assistant Government Pleader, for the Respondents.

Coram : MR.JUSTICE A.N.DIVECHA

16th February 1996

ORAL JUDGEMENT

The order passed by the Competent Authority at Surat (respondent No.2 herein) on 17th September 1983 under section 8 (4) of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act

for brief) as affirmed in appeal by the order passed by the Urban Land Tribunal at Ahmedabad (respondent No.3 herein) on 29th December 1987 in Appeal No.Surat-43 of 1984 is under challenge in this petition under Articles 226 and 227 of the Constitution of India. By his impugned order, respondent No.2 declared the holding of the petitioner to be in excess of the ceiling limit by 4179 square metres.

2. The facts giving rise to this petition move in a narrow compass. Petitioner No.1 filed her declaration in the prescribed form under section 6 (1) of the Act with respect to her holding within the urban agglomeration of Surat. That form was duly processed by respondent No.2. After observing all necessary formalities under section 8 of the Act, by his order passed on 17th November 1983 under section 8 (4) of the Act, respondent No.2 came to the conclusion that the holding of the declarant was in excess of the ceiling limit by 4179 square metres and it was declared surplus. Its copy is at Annexure-A to this petition. It is the case of the petitioners that petitioner No.1 filed her declaration for and on behalf of the family and the remaining petitioners have also interest in the subject-matter of the declaration. All the petitioners thereupon felt aggrieved by the order at Annexure-A to this petition. All of them therefore carried the matter in appeal before respondent No.3 under section 33 of the Act. A copy of the memo of appeal is at Annexure-B to this petition. It came to be registered as Appeal No.Surat-43 of 1984. By the order passed on 29th December 1987 in the aforesaid appeal, respondent No.3 dismissed it. Its copy is at Annexure-C to this petition. The aggrieved petitioners have thereupon approached this court by means of this petition under Articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure-A to this petition as affirmed in appeal by the appellate order at Annexure-C to this petition.

3. This appeal can be disposed of on a short ground that an opportunity of hearing was not afforded to the petitioner by respondent No.3 on 9th December 1987. It appears that the hearing of the appeal was kept from time to time by respondent No.3 and on all the previous occasions none on behalf of the appellants appears to have remained present. It was therefore finally kept for hearing on 9th December 1987. The petitioners have clearly averred in para 3.6 (ii) that on 9th December 1987 the Tribunal had left for Rajkot when the clerk of the Advocate went to the office of respondent No.2 for inquiring about conducting of the appeal. It transpires from the appellate order at Annexure-A to this petition that the hearing took place on 9th December 1987. If the Tribunal had proceeded to Rajkot on that day, no hearing could have taken place on that day.

4. It appears that at the time of the preliminary hearing of this petition, this court by its order passed on 20th June 1990

issued notice to respondent No.3 making it returnable on 27th June 1990 presumably with a view to ascertaining the factual position with respect to the aforesaid averments contained in para 3.6 (ii) of this petition. It appears that there was no affidavit-in-reply filed by and on behalf of respondent No.3 in this case and thereafter this court issued Rule in this petition by its order passed on 19th July 1990. Even during the pendency of this petition, no affidavit-in-reply has come to be filed by or on behalf of respondent No.3 controverting the averments contained in para 3.6 (ii) of this petition. Since the relevant averments have been made on solemn affirmation by means of an affidavit appended to this petition and since they have remained uncontroverted, there is no reason not to accept such sworn statements made in para 3.6 (ii) of this petition. In its ruling in the case of RAMABEN AMRUTLAL BHAVSAR v. STATE reported in 1984 (2) 25 (2) Gujarat Law Reporter at page 1050, this court has held that, if the averments of the petitioners are not denied specifically, they are deemed to be admitted. Sitting as a single Judge, the aforesaid ruling of this court is binding to me. Even otherwise, I am in respectful agreement therewith. It is on all fours applicable in the present case.

5. In view of my aforesaid discussion, there is no escape from the conclusion that no opportunity of hearing was given to the petitioners with respect to the appeal on the date of hearing kept on 9th December 1987 as the Tribunal was not available and respondent No.3 had gone to Rajkot. The impugned appellate order at Annexure-C to this petition cannot therefore be sustained in law as it is passed in contravention of the rule of audi alteram partem. It has to be quashed and set aside. The matter will have to be remanded to respondent No.3 for restoration of the appeal in question to file and for its fresh decision according to law after giving an opportunity of hearing to the petitioners.

6. In the result, this petition is accepted to the aforesaid extent. The appellate order passed by the Urban Land Tribunal at Ahmedabad (respondent No.3 herein) on 29th December 1987 in Appeal No.Surat-43 of 1984 at Annexure-C to this petition is quashed and set aside. The matter is remanded to respondent No.3 for restoration of the appeal proceedings to file and for its fresh decision according to law in the light of this judgment of mine. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

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